

# State of South Dakota

SEVENTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2001

661E0050

## HOUSE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **HB 1002** - 01/31/2001

Introduced by: Representatives Monroe, McCoy, and Slaughter and Senators Ham and  
Madden at the request of the Interim Judiciary Committee

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the waiver of a  
2 patient's privilege on communications with a physician or psychotherapist.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 19-13-11 be amended to read as follows:

5 19-13-11. ~~There is no~~ The privilege under § 19-13-7 as to a communication relevant to an  
6 issue of the physical, mental, or emotional condition of the patient is waived in any proceeding  
7 in which ~~he relies upon~~ the condition as is an element of ~~his~~ the patient's claim or defense or,  
8 after the patient's death, in any proceeding in which any party relies upon the condition as an  
9 element of ~~his~~ a claim or defense.

10 Section 2. That § 19-2-3 be amended to read as follows:

11 19-2-3. In any action or proceeding or quasi-judicial administrative proceeding, ~~whenever~~  
12 if the physical or mental health of any person is in issue, any privilege under § 19-13-7 ~~shall~~  
13 ~~conclusively be deemed to be~~ is waived at trial or for the purpose of discovery under chapter  
14 15-6 if such action or proceeding is civil in nature. However, the waiver of the privilege shall be

1 narrow in scope, closely tailored to the time period or subject matter of the claim. If any party  
2 or the holder of the privileged records objects to the discovery of the privileged communication  
3 on the grounds that disclosure of the communication would subject the party to annoyance,  
4 embarrassment, oppression, or undue burden or expense and that the disclosure of the privileged  
5 communication is not likely to lead to the discovery of relevant evidence, the court shall conduct  
6 an in camera review of the privileged communication to determine whether the communication  
7 is discoverable.